

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

SPORTS SHINKO CO., LTD., a
Japan corporation,

Plaintiff,

vs.

QK HOTEL, LLC, a Hawaii limited
liability company, et al.

Defendants

and

FRANKLIN K. MUKAI,

Third-Party Plaintiff,

vs.

SPORTS SHINKO (USA) CO., LTD.,
a Delaware Corporation, et al.

AND CONSOLIDATED CASES

CV 04-00124 ACK-BMK

CV 04-00125 ACK-BMK

CV 04-00126 ACK-BMK

CV 04-00127 ACK-BMK

CV 04-00128 ACK-BMK

CONSOLIDATED CASES

DECLARATION OF
ROBERT A. MARKS

DECLARATION OF ROBERT A. MARKS

Pursuant to 28 U.S.C. § 1746, ROBERT A. MARKS states as follows:

1. I am an attorney licensed to practice law before this court.

2. I am counsel for the following defendants in the captioned

consolidated actions: Kiahuna Golf Club, LLC, KG Kauai Development, LLC,

Pukalani Golf Club, LLC, KG Maui Development, LLC, Mililani Golf Club, LLC,

QK Hotel, LLC, OR Hotel, LLC, and KG Holdings, LLC.

3. The Court is requested to take judicial notice of the following pleadings in the record of these consolidated cases, true and correct copies of which are attached hereto bearing the exhibit number noted in the table below:

A	2 nd Amended Complaint – 04-0128 (Mililani Golf Course)
G	Plaintiffs’ Ex Parte Motion to assign to single judge (motion and memorandum, pp. 3-4 only)
H-1	2 nd Amended Complaint – 04-0124 (Queen Kapiolani Hotel)
H-2	2 nd Amended Complaint – 04-0125 (Pukalani Golf Course)
H-3	2 nd Amended Complaint – 04-0126 (Kiahuna Golf Course)
H-4	2 nd Amended Complaint – 04-0127 (Ocean Resort Hotel)
N	1 st Amended Complaint – 04-0128 (Mililani Golf Course) (caption, page 2 and signature page only)

4. Attached and marked Exhibit B is a true and correct copy of the cover sheet and bates page 256 1013 (English translation and Japanese original) of the Draft of Reorganization Plan filed in the Osaka District Court by the bankruptcy trustee of Sports Shinko Co. Ltd. (“SS-Japan”). Plaintiffs produced this document in discovery.

5. Exhibit C is a true and correct copy of the cover sheet (Bates 111 3350) and Bates 111 3355 (part) excerpted from financial statements of Sports Shinko Co., Ltd. for the period from January 1, 2000 to December 31, 2000 produced by plaintiffs in discovery in this litigation (English translation and Japanese original).

6. Exhibit D is a true and correct copy of a document of Bates 256 1544, which is a tax document produced by plaintiffs in discovery that indicates the shareholders of Kinoshita Construction Co., Ltd., aka Kinoshita Kensetsu Co., Ltd.

7. Exhibit E is a true and correct copy of a document of Bates 256 1543, which is a tax document produced by plaintiffs in discovery that indicates the shareholders of Misaki Country, aka Misaki Country Club Co., Ltd., aka Misaki CC Co., Ltd.

8. Plaintiffs marked Exhibits C, D and E “confidential”. These exhibits therefore fall within the protections of the Stipulated Protective Order filed herein on January 25, 2005 and may only be filed under seal and only “upon prior application to and approval by the court.” Id. at ¶ 8. I will seek consent of plaintiffs’ attorney to waive the “confidential” designation of these documents, and if that is not forthcoming, will seek the approval of the Court to file these exhibits under seal. I will make the waiver request to plaintiffs when the Motion for Summary Judgment and Concise Statement of Facts are served, so they will have access to these exhibits from the time the motion is served.

9. Attached and marked exhibit F is a true and correct copy of pages 1-8, 11-13, 16-17, 30, and signature pages of Plaintiffs’ Response to Defendants OR Hotel LLC and Mililani Golf Club LLC’s First Request for Admissions; First Request for Answers to Interrogatories; and First Request for Production of

Documents to Plaintiffs Sports Shinko Co., Ltd. and Sports Shinko (USA) Co., Ltd. dated January 3, 2005.

10. Attached and marked exhibits I, J, K, L, M, and P are certified copies of the State of Hawaii, Department of Commerce and Consumer Affairs, Business Registration Division, Domestic Profit Corporation Annual Report for the year ending December 31, 2001 for the following corporations: Sports Shinko (Mililani) Co., Ltd., Sports Shinko (Pukalani) Co., Ltd., Sports Shinko (Kauai) Co., Ltd., Sports Shinko (Waikiki) Corporation, Sports Shinko Resort Hotel Corporation, and Sports Shinko (Hawaii) Co., Ltd., respectively.

11. Attached and marked exhibit O is a certified copy of the annual report of Sports Shinko (USA) Co., Ltd. for the year 2000 on file with the Delaware Secretary of State.

12. Attached and marked exhibit Q are true and correct copies of the following pages from the transcript of the oral deposition of Satoshi Kinoshita taken by plaintiffs' attorneys on April 19, 20 and 21, 2005: cover page and pp. 2, 29, 45, 166-67 and 262. Plaintiffs produced the foregoing deposition transcript in discovery in this litigation.

13. Attached and marked exhibit R is a true and correct copy of a Stand-Aside and Subordination Agreement dated November 9, 1992 between Sports Shinko (Hawaii) Co., Ltd., Sports Shinko Co., Ltd., Sports Shinko (USA) Co.,

Ltd., Sports Shinko (Mililani) Co., Ltd. and Bank of Hawaii, which is among the documents produced by the KG Defendants in discovery in this litigation.

14. Attached and marked exhibit S is a true and correct copy of pages 1-6, 19, 27-29 and schedules 4.1(g) and 5.4(c) (Bates A12368-73, A12386, A12394 - 96, A12493, A12497, respectively) of the Purchase and Sale Agreement made as of January 15, 2002 between Sports Shinko (Waikiki) Corporation, Sports Shinko (Mililani) Co., Ltd., Sports Shinko (Pukalani) Co., Ltd., Sports Shinko (Kauai) Co., Ltd., Pukalani STP Co., Ltd., Sports Shinko (Hawaii) Co., Ltd., Sure Transportation, Inc. and KG Holdings, LLC, which is among the documents produced by the KG Defendants in discovery in this litigation.

15. Attached and marked exhibit T is a true and correct copy of a letter dated January 24, 2002 from KG Holdings, LLC to Sports Shinko (Waikiki) Corporation, Sports Shinko (Mililani) Co., Ltd., Sports Shinko (Pukalani) Co., Ltd., Sports Shinko (Kauai) Co., Ltd., Pukalani STP Co., Ltd., Sports Shinko (Hawaii) Co., Ltd., and Sure Transportation, Inc. regarding, among other things, the allocation of the purchase price paid under the Purchase and Sale Agreement (exhibit S (excerpts)). This exhibit is among the documents produced by the KG Defendants in discovery in this litigation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Honolulu, Hawaii on January 13, 2006.

/s/ Robert A. Marks
ROBERT A. MARKS